THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.8801 OF 2000 and

CONTEMPT CASE NO.36 OF 2005

09.3.2006

Between:

Smt.Manjula W/o.Narasimulu

… Petitioner

AND

The Joint Collector, Medak District at Sangareddy

And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.8801 OF 2000 and

CONTEMPT CASE No.36 OF 2006

COMMON ORDER:

The writ petition is filed challenging the proceedings of the first respondent dated 20.11.1999. This Court passed interim orders on 17.5.2000 suspending the impugned order. Alleging that even while the impugned order is in force, respondents 2 and 3 are not allowing the petitioner to enter the land, the petitioner filed contempt case being C.C. No.36 of 2006. When the C.C. was listed before this Court, it was brought to the notice of this Court that the respondents filed an application W.V.M.P. No.446 of 2006 to vacate the interim order. Therefore, this Court directed the contempt case and writ petition be listed for 'Final Hearing'. Both were heard together and are being disposed of by this common order.

The fact of the matter is not in dispute. The first petitioner purchased the land admeasuring Acs.4.00 in survey No.29/12 and another extent of Acs.0.36 guntas in

survey No.29/9 of Malparthy village under unregistered sale deed dated 16.5.1975. Likewise, the second petitioner purchased the land admeasuring Acs.4.00 in survey No.29/12 and another extent of Acs.0.35 guntas in survey No.29/9. The third petitioner also purchased the land admeasuring Acs.4.25 guntas in survey No.29/8 of Malparthy village. The vendors were Shamsher Baig, Ismail Baig, Hyder Baig, Chouse Baig, Naseer Baig and Husain Baig. The petitioners allege that after purchasing the land, they brought the land into cultivation, obtained loan from the District Cooperative Central Bank as well as Scheduled Castes Financial Corporation and developed a mango garden by digging a bore well. The second respondent initiated action under the provisions of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (the Act, for brevity) and issued show cause notice. The petitioners submitted explanation. After considering the explanation, the second respondent ordered resumption of the land by proceedings dated 20.11.1999 treating the transaction between the original assignees and petitioners as null and void. The petitioners filed writ petition being W.P.No.25528 of 1999 against the orders of the second respondent. This Court by order dated 13.12.1999 disposed of the writ petition giving liberty to the petitioners to file revision petition before the first respondent. Accordingly, they filed the revision petition before the first respondent, who dismissed the same by proceedings R.P.No.F3/33/Assign./99, dated 09.5.2000. The petitioners contend that they purchased the land prior to coming into force of the Act and, therefore, Section 3 of the Act has no application. They further contend that the petitioners are persons belonging to Scheduled Caste that they are landless and poor persons and, therefore, as per Section 3(5) of the Act, the land in their possession cannot be resumed.

In the counter affidavit filed by the Mandal Revenue Officer (MRO); the second respondent herein – it is stated that the land admeasuring Acs.24.16 guntas in survey No.29 of Malparthy village (Government land) was assigned to seven persons in 1959. The petitioners herein purchased the land from original assignees, namely, Gouse Baig, Nazeer Baig, Hyder Baig, Hussain Baig, Ismail Baig, Nazeer Baig and Shamsheer Baig. Therefore, the provisions of the Act are attracted. After following due process of law, the land was resumed to the Government and possession was taken on 01.12.1999 under Panchanama. It is also alleged that the vendors of the petitioners alienated the land in violation of the patta certificate and that the petitioners are not poor persons. It is further alleged that the third petitioner is a bank employee and petitioners 1 and 2 are wives of the petitioner No.3 and, therefore, they are not eligible for the benefit under Section 3(5) of the Act.

Learned Counsel for the petitioner and learned Assistant Government Pleader made submissions with reference to the contentions raised in the pleadings and, therefore, it is not necessary to summarise the submissions.

The petitioners have not filed any reply affidavit denying the counter averments and, therefore, the counter averments stand unrebutted. It is well settled that when the averments in affidavit are not denied by filing reply affidavit, the averments of the affidavit are deemed to have been proved. (See **C. S. Rowjee v State of A.P. Bharat Singh v. State of Haryana** and **Naseem Bhanu v State of U.P.**). From the counter averments, it becomes clear that the third petitioner is a bank employee and

petitioners 1 and 2 are his wives. Therefore, they cannot be treated as landless and poor persons. Further, the land admeasuring Acs.4.00 in survey No.29/13 and Acs.0.36 guntas in survey No.29/9 was assigned to Gouse Baig and Nazeer Baig respectively. Likewise, the land admeasuring Acs.4.35 guntas in survey Nos.29/12 and 29/9 was assigned to Hyder Baig and the land admeasuring Acs.4.25 guntas in survey No.29/8 was assigned to Hussain Baig. As per the conditions of assignment and also as per the provisions Section 3(1) of the Act, assigned land is non-alienable either by purchase, gift, lease, mortgage or exchange and if any assigned land is transferred, such transaction is void and in such an event, it is competent for the MRO to resume the land under Section 4 of the Act. In this case, before issuing the orders of resumption, MRO issued show cause notice, considered the explanation and passed the orders and, therefore, this Court does not find any infirmity.

The submission of the learned Counsel for the petitioners that the transfer/alienation of assigned land being prior to coming into force of the Act it is saved, cannot be accepted. In **K.Annapurnamma v P.Koteswara Rao**, a Division Bench of this Court considered the question whether lease of assigned prior to coming into force of the Act is saved under the provisions of the Act. While observing that when once the land assigned comes under the definition of "assigned Land' the transfer of such land is prohibited, the Division Bench held as under.

> The expression "assigned lands" is defined to mean '*lands assigned by the Government to the landless poor persons under the rules for the time being in force,* subject to condition of non-alienation'. "Landless poor person" is defined as to mean 'a person who owns an extent of land not more than two and half acres of wet land or five acres of dry land and *who has no other means of livelihood* '. "Transfer" means 'any sale, gift, exchange, mortgage with or without possession, lease or any other transaction with assigned lands'. **Now, as per Section 3(1), any land assigned before or after the commencement of the Act to a landless poor shall not be transferred and shall be presumed never to have been transferred and accordingly the right or title in such assigned land shall not vest in any person acquiring the land by such transfer.** Sub-section (2) of Sec.3 lays down that no landless poor person shall transfer any assigned land, and no person shall acquire any assigned land, either by purchase, gift, lease, mortgage, exchange or otherwise. Sub-section (3) declares that any transfer or acquisition made in contravention of the provisions of sub-section (1) or sub-sec.(2) shall be deemed to be null and void.
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> (emphasis supplied)

After perusing the orders of the MRO as well as revisional authority, this Court is convinced that the action taken by the respondents under the provisions of the Act does not suffer from any vice or infirmity.

The writ petition is devoid of merit and is, accordingly, dismissed. In view of the orders passed in the writ petition, the contempt case is, accordingly, dismissed. No costs.

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(**V.V.S.RAO, J**)

March 09, 2006

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